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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/202,216 04/08/99 ATARASHI

T 052648

EXAMINER

HM12/0605
SUGHRUE MION ZINN MACPEAK & SEAS
2100 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20037

WAVE T

ART UNIT

PAPER NUMBER

1615

DATE MAILED:

06/05/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/202,216	ATARASHI ET AL.	
	Examiner	Art Unit	
	Todd D Ware	1615	

-- Th MAILING DATE of this communication appears on the cover sheet with the correspond nc address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 20 March 2001.

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-7, 9-12 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-7, 9-12 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) <input type="checkbox"/> Notice of References Cited (PTO-892)	18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	20) <input type="checkbox"/> Other:

DETAILED ACTION

Receipt of request for extension of time (granted) and response both filed 3-20-01 is acknowledged. Claims 1-12 are pending.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-7, 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Clark et al (3,767,443; hereafter '443).

'443 discloses multilayer-coated powder pigments that can be used in cosmetic such as eye shadows, lipsticks and nail varnishes comprising a core coated with plural layers of a metal oxide and an organic film-forming substance. The plural layers of '443 have different refractive indices (abstract; C 9, L 45-46). The cores are made of polymers such as polyethylene terephthalate and the coated particles are comminuted into particles that are about 70 microns. The specific gravity of the instant claims would be inherent in the compositions of '443. The particles appear to be made of the same materials of the instant claims and are pulverized. The thickness of the coatings appears to satisfy the requirements of instant claim 12 (C 6, L 3-45).

Response to Arguments

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3. Applicants' arguments filed 3-20-01 have been fully considered but they are not persuasive. Applicants argue that '443 does not disclose a core or a base particle upon which layers are coated with reference made to C 2, L 38-42, 57-60, and 64- C 3, L 11. In these sections, applicants argue that '443 does not teach that the pigments have a core and therefore do not meet the requirement of the instant claims where the powder comprises a base particle, upon which layers are coated. This is not found persuasive. Example 1 (C 9, L 9-47) outlines the process of the formation of the pigments of '443. Here, a film is coated with inorganic metal compounds and then after removing the coated film from a belt is ground into particles. These particles are solid and therefore meet the requirement of a base particle as they must necessarily possess a center. Applicants' arguments would be credible if the particles were hollow or liquid as a shell surrounding liquid or an empty shell would not require a base particle, however '443 discloses that the particles are ground and solid. Applicants' drawings attached to the response are noted, however, as written, the claims are not limited to the drawing of figure 1-2. The claims only require a base particle having plural coating layers. They do not require a core surrounded with plural coating layers, as attached figure 1-2 is drawn.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-7, 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark et al (3,767,443; hereafter '443).

'443 discloses multilayer-coated powder pigments that can be used in cosmetic such as eye shadows, lipsticks and nail varnishes comprising a core coated with plural layers of a metal oxide and an organic film-forming substance. The plural layers of '443 have different refractive indices (abstract; C 9, L 45-46). The cores are made of polymers such as polyethylene terephthalate and the coated particles are comminuted into particles that are about 70 microns. The specific gravity of the instant claims would be inherent in the compositions of '443. The particles appear to be made of the same materials of the instant claims and are pulverized. Manipulation of the thickness of the coatings would be obvious to one skilled in the art based upon the teachings at C 6, L 3-45 with the expectation that this would alter the refractive index of the coatings and provide a desired color; the motivation lying therein.

Response to Arguments

6. Applicants' arguments filed 3-20-01 have been fully considered but they are not persuasive. Applicants argue that '443 does not disclose a core or a base particle upon which layers are coated with reference made to C 2, L 38-42, 57-60, and 64- C 3, L 11. In these sections, applicants argue that '443 does not teach that the pigments have a core and therefore do not meet the requirement of the instant claims where the powder comprises a base particle, upon which layers are coated. This is not found persuasive. Example 1 (C 9, L 9-47) outlines the process of the formation of the pigments of '443.

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Here, a film is coated with inorganic metal compounds and then after removing the coated film from a belt is ground into particles. These particles are solid and therefore meet the requirement of a base particle as they must necessarily possess a center.

Applicants' arguments would be credible if the particles were hollow or liquid as a shell surrounding liquid or an empty shell would not require a base particle, however '443 discloses that the particles are ground and solid. Applicants' drawings attached to the response are noted, however, as written, the claims are not limited to the drawing of figure 1-2. The claims only require a base particle having plural coating layers. They do not require a core surrounded with plural coating layers, as attached figure 1-2 is drawn.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd D Ware whose telephone number is (703) 305-1700. The examiner can normally be reached on 7:30 AM - 4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on (703)308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

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June 1, 2001